Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies on Foreign	)	
Participation in the U.S.	)	IB Docket No. 97-142
Telecommunications Market	)	

COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc. ("BTNA"), by its attorneys, hereby submits its comments in response to the Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking 1/ in the above-captioned proceeding concerning implementation in the United States of the World Trade Organization ("WTO") Agreement on Basic Telecommunications Services ("the Agreement"). 2/

I. INTRODUCTION

The goals of the FCC's proposed policy properly reflect the objectives of the Agreement to assure transparency in regulatory policy and procedures and to accord national treatment and most-favored-nation treatment to the public

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1/ In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Order and Notice of Proposed Rulemaking, FCC 97-195, IB Docket No. 97-142 (June 4, 1997) (the "Notice").

2/ World Trade Organization Basic Telecom Agreement (Feb. 15, 1997).

telecommunications network and service suppliers of WTO Member countries. The proposal to establish a presumption that the grant of Title II and III and cable landing license applications of carriers from WTO member nations through streamlined processing is in the public interest, and it is in accord with WTO principles and the Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper") adopted by 65 countries.

At this juncture, the Commission should affirm its commitment to the WTO principles and process by adopting regulatory policies which assume that WTO member countries will comply with the WTO Agreement, allowing applicants from these countries to be treated accordingly under U.S. regulations. To further encourage global competition, however, the Commission should establish an expedited complaint process to deal swiftly and forcefully with allegations of anti-competitive practices affecting the U.S. telecommunications market.

II. THE FCC SHOULD AFFIRM ITS COMMITMENT TO WTO PRINCIPLES BY EMPHASIZING OPEN ENTRY AND ESTABLISH EXPEDITED COMPLAINT PROCEDURES WITH STRONG SANCTIONS TO FURTHER COMPETITION IN INTERNATIONAL MARKETS

The proposed presumption that applications under Title II and III of the Communications Act and pursuant to the Cable Landing License Act will be in the public interest is appropriate. That presumption should also embrace the Commission's faith in the WTO principles and process by assuming initially that

WTO countries will implement their commitments in a timely fashion and that applicants from WTO countries will not engage in anti-competitive behavior. 3/ Many WTO member countries have committed to the principles of the Reference Paper which are intended to ensure the existence of regulatory policies and procedures that protect against competitive abuse. 4/ The FCC also should affirm its commitment to those principles in its regulations implementing the WTO agreement by extending its well-established preference for open entry to applicants from WTO member countries.

Rather than impose license conditions (other than the reporting conditions suggested in the NPRM) on applicants from WTO member countries, the Commission should instead impose meaningful sanctions -- forcefully and swiftly -- where it finds evidence of anticompetitive behavior involving any U.S. carrier (including those that are affiliates of foreign carriers) that affects the U.S. international telecommunications market. Any complainant should be permitted to

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3/ To do so would not be plowing new ground for this Commission. As long ago as 1971, the FCC set such a precedent in Establishment of Policies and Procedures for Consideration of Application to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service and Proposed Amendments to Parts 21, 43, and 61 of the Commission's Rules, 29 F.C.C. 2d 870 (1971), where the FCC developed a presumption of new entry, i.e., rather than delineating the circumstances in which applications would be denied, the Commission made a general finding that the public interest would be served by the grant of applications from new competitors.

4/ E.g., Reference Paper at 1 ("Competitive safeguards"), 2.2 ("Interconnection to be ensured"), 2.3 ("Public availability of the procedures for interconnection negotiations"), 4 ("Public availability of licensing criteria").

allege that specific acts or omissions of an U.S. authorized common carrier or of its foreign affiliate pose a very high risk to competition in the U.S. market in violation of FCC policies and rules. The complaint process should be expedited to ensure swift remedial action if the allegations are substantiated.

The Commission could, for example, issue an order directing the carrier to cease the offending practice or condition the licenses and authorizations of the carrier to address the improper practice or to restrict that carrier's actions (e.g., by limiting circuit additions until such time as the market or regulatory failure is rectified). 5/ A prohibition on exclusive marketing arrangements would be a significant sanction because it would critically circumscribe a carrier's flexibility with respect to global marketing. Its use, therefore, should be limited to situations of proven violations of Commission policies and rules to ensure that the premature imposition of a regulatory restriction does not inadvertently slow the development of competitive international markets and delay the benefits of competition -- in terms of price, product selection and integrated global offers -- for consumers. In extraordinary circumstances, structural separation may be the only remedy against proven anticompetitive conduct. Where an operator is a repeat offender of a significant violation of Commission policies or rules, the FCC may be forced to rescind that carrier's authorization. In any event, the precise remedy should be fashioned to address the particular circumstances of the case or infraction.

5/ See Notice at ¶¶ 38, 124-27 (citing 47 U.S.C. §§ 214, 502, 503 for authority impose fines, forfeitures, and additional conditions).

III. CERTAIN SPECIAL CONCESSIONS CONDITIONS MAY BE NECESSARY FOR CARRIERS AFFILIATED WITH OPERATORS THAT HAVE AN INTERNATIONAL FACILITIES MONOPOLY

Although BTNA encourages the Commission to permit carriers from WTO Member countries to enter the U.S. market freely under the presumption that their home markets will soon meet the WTO imperatives, the Commission may, nonetheless, feel compelled to exercise caution. If so, the Commission may want to impose certain "no special concessions" conditions on authorizations of carriers affiliated with an operator holding an international facilities monopoly. These conditions may include prohibitions pertaining to operating agreements, interconnection arrangements, disclosure of network information, or handling of U.S. traffic originating or terminating in third countries.

Carriers affiliated with operators in countries that permit international facilities competition should not be subjected to special concessions conditions. Under this approach, the FCC need not determine whether a foreign affiliate of an applicant is dominant. 6/

6/ Under the suggested approach, the Commission would not have to engage in complex and administratively burdensome determinations of dominant/nondominant status, and applicants would be relieved of the uncertainty and delay associated with such determinations.

IV. THE COMMISSION SHOULD RETAIN ITS EXISTING REGULATORY FRAMEWORK FOR APPLICANTS WITH DOMINANT AFFILIATES IN NON-WTO MEMBER COUNTRIES

For non-WTO countries, there are no commitments to open markets. Even if these countries liberalize their markets, they are under no WTO obligations regarding non-discrimination and transparency nor are they subject to the dispute resolution process. Thus, BTNA agrees with the Commission proposal that the existing effective competitive opportunities test should apply to applicants from those countries in order to advance the goals of the Commission's competitive policies and in the expectation that bilateral pressures may serve to open markets in those countries.

V. CONCLUSION

Accordingly, the Commission should affirm its commitment to the WTO principles by adopting an open market policy and an expedited complaint and enforcement mechanism to assure compliance with Commission policies and rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathy Bates, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 9th day of July, 1997, a copy of the foregoing comments was hand delivered to the parties listed below.

Kathy Bates

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Dated: July 9, 1997

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